

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

SECURITAS SECURITY SERVICES USA, INC.,

Employer

Case No. 20-RC-142676

And

**INTERNATIONAL UNION OF SECURITY
AND PROTECTIVE OFFICERS**

Petitioner

DECISION AND DIRECTION OF ELECTION

The International Union of Security and Protective Officers (Petitioner) filed petitions under Section 9(c) of the National Labor Relations Act seeking to represent units of full-time and part-time security officers employed by Securitas Security Services USA, Inc. (Employer) at Lihue Airport (20-RC-142676).¹

The Employer is a security company that provides security services for various locations, including at Lihue Airport. The Employer disputes that the Petitioner is a labor organization as defined by Section 2(5) of the Act. The Employer further argues that the Petitioner will not satisfy the guard union constraints of Section 9(b)(3) of the Act.

For the reasons described below, I find that the Petitioner is a labor organization within the meaning of the Act and is appropriately classified as a guard union within the meaning of the Act. Accordingly, I will order an election in this matter.

FACTS

¹ All of the substantive testimony was provided in the hearing for Case 20-RC-142674. In that hearing, the parties agreed that the record for Case 20-RC-142674 would be used to decide the issues in both cases.

Richard Dods is a full-time employee of the Employer at the Kahului Airport. He was the only witness to testify at the hearing. He formed the Petitioner in August 2014. Dods testified that the purpose of the Petitioner is to represent security guards in regard to their terms and conditions of employment. Dods testified that, in creating the Petitioner, he drafted a constitution and registered with the Department of Labor.

At the time of the hearing, Dods was the only officer of the Union. He testified that, to further the purposes of the Petitioner, he had twice met with employees. Dods anticipated that, in the future, members would participate in the organization by voting for officers and suggesting issues for negotiation.

In his testimony, Dods stated that the Petitioner would not deny membership to anyone because of age, disability, genetic information, national origin, pregnancy, gender, race, color, or religion. Dods testified that he understood that, as a guard union, the Petitioner could not grant membership to nonguards.

ANALYSIS

Labor Organization Status.

At issue is whether the Union is a labor organization within the meaning of Section 2(5) of the Act, which provides:

Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The statutory definition of a “labor organization” has long been interpreted broadly. See, *Electromation, Inc.*, 309 NLRB 990, 993-94 (1992), enf’d. 35 F.3d 1148 (7th Cir. 1994). To fall within the definition of a “labor organization,” the Board has held that employees must participate in the organization and it must exist for the purpose, in whole or in part, of dealing with employers on their behalf regarding their wages, hours of employment and other terms and conditions of employment. *Alto Plastic Mfg. Corp.*, 136 NLRB 850, 851-852 (1962). Under this definition, an incipient union that has not

yet actually represented employees may, nevertheless, be accorded Section 2(5) status if it was formed for the purpose of representing employees. *Coinmach Laundry Corp.*, 337 NLRB 1286 (2002); *The East Dayton Tool & Die Company*, 194 NLRB 266 (1971); *Butler Manufacturing Company*, 167 NLRB 308 (1967). A finding of labor organization status does not require proof that the entity in question has ever “dealt with” an employer. *Coinmach Laundry, supra*; *Armco, Inc.*, 271 NLRB 350 (1984); *Steiner-Liff Textile Products Co.*, 259 NLRB 1064, 1065 (1982). Rather, it is the intent of the organization that is critical in ascertaining labor organization status, regardless of the progress of the organization’s development and what activities the organization has yet to actually perform. *Edward A. Utlaut Memorial Hospital*, 249 NLRB 1153, 1160 (1980). Indeed, even if such an organization becomes inactive without ever having represented employees, it is still deemed to have been a statutory labor organization if its organizational attempts “[c]learly ... envisaged participation by employees,” and if it existed “for the statutory purpose although they never came to fruition.” *Comet Rice Mills*, 195 NLRB 671, 674 (1972). Moreover, “structural formalities are not prerequisites to labor organization status.” *Yale New Haven Hospital*, 309 NLRB 363 (1992) (no constitution, by-laws, meetings, or filings with the Department of Labor); *Butler, supra*, at 266 (no constitution or officers). Thus, the absence of a constitution or bylaws is irrelevant when analyzing whether a petitioner is a labor organization within the meaning of the Act. *Coinmach Laundry, supra*.

Richard Dods, the sole union officer for the International Union of Security and Protective Officers, testified that his purpose in forming the Petitioner was to organize security guards in order for the Petitioner to represent them regarding their terms and conditions of employment. To that end, Dods testified that he created a constitution for the Petitioner, registered with the Department of Labor, and reviewed Section 2(5) of the Act.

The record establishes the Petitioner’s intention to represent employees as a labor organization. Dods testified that members will be able to participate in the Petitioner’s representation of them by suggesting issues for negotiation. At the time of

the hearing, the Union had held two meetings with employees, one in Kona and one in Kahului.

While the Petitioner is not yet fully fledged, the record establishes that it will admit employees of guard service companies to membership. The Petitioner will allow the members to participate in its internal structure, which will include an election of officers.

The intention of the Petitioner to form a labor organization is clear from the record. Accordingly, I find that the Petitioner's is a labor organization under Section 2(5) of the Act.

Labor Organization's Status as a Guard Union.

Section 9(b)(3) states, in relevant part, that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization ... is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." Indirect affiliation between a guard union and a nonguard union is established when "the extent and duration of [the guard union's] dependence upon [the nonguard union] indicates a lack of freedom and independence in formulating its own policies and deciding its own course of action." *Wells Fargo Guard Services*, 236 NLRB 1196, 1197 (1978), quoting *The Magnavox Company*, 97 NLRB 1111, 1113 (1952). However, "the noncertifiability of a guard union must be shown by definitive evidence. Any less stringent standard would seriously undermine the rights of guards to be represented by a union and of guard unions to represent guards." *Lee Adjustment Center*, 325 NLRB 375, 376 (1998), citing *Children's Hospital of Michigan*, 317 NLRB 580, 581 (1995), *enfd. sub nom. Henry Ford Health System v. NLRB*, 105 F.3d 1139 (6th Cir. 1997).

Dods testified that he formed the Petitioner in order to represent security guards. He testified that he reviewed Section 9(b)(3) of the Act and that it informed his draft of the Petitioner's constitution. Repeated questioning of Dods on the subject yielded consistent responses that nonguards would not be admitted for membership. For

example, when the Employer asked Dods if parking attendants would be permitted to join the Petitioner, he responded that they would not be permitted to join if they were nonguards.

Accordingly, I find that Petitioner is a labor organization as defined in Section 2(5) of the Act.

CONCLUSIONS AND FINDINGS

Pursuant to the provision of Section 3(b) of the Act, the Board has delegated its authority in this proceeding the undersigned. Upon the entire record,² I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization involved here claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁴

5. The following constitute an appropriate unit of employees of the Employer for the purpose of the collective bargaining within the meaning of Section 9(b) of the Act⁵:

² Briefs filed by the Petitioner and the Employer were fully considered. No other briefs were filed.

³ The Employer, a Delaware corporation, is engaged in providing security services at the Kona International Airport, the only location involved in this case. During the past twelve-month period, the Employer, in the course and conduct of its business operations, purchased and received at the Kona Airport location, goods valued in excess of \$50,000 directly from points located outside the State of Hawaii.

⁴ There are no bars asserted to an election being conducted in this matter.

⁵ The unit description was stipulated to by the parties.

All full-time and regular part-time security officers employed by the Employer at the Lihue Airport, 3901 Mokulele Loop, Lihue, Hawaii 96766, but excluding all captains, lieutenants, “Sierra” (supervisors), office employees, professional employees and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Union of Security and Protective Officers, or by no labor organization.

The date, time and place of the election will be specified in the notice of election that the Board’s Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees who worked an average of four or more hours per week during the calendar quarter immediately preceding the above-referenced payroll period ending date are eligible to vote. See, *Davison-Paxon Co.*, 185 NLRB 21 (1970).

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began

more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, I hereby direct that within seven days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list that contains the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Sub-Regional Office, National Labor Relations Board, Sub-Region 37, 300 Ala Moana Boulevard, Room 7-245, P.O. Box 50208, Honolulu, HI 96850-0001 on or before **January 16, 2015**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlrb.gov,⁶ by mail, or by facsimile transmission at (808)541-2818. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by electronic filing,

⁶ To file the eligibility list electronically, go to the Agency's website at www.nlrb.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by January 23, 2015.

Signed at San Francisco, California this 9th day of January 2015.

/s/

Joseph F. Frankl, Regional Director, Region 20
National Labor Relations Board
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